

Notices of Supplemental Proposed Rulemaking

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:
4 A.A.R. 2008, July 31, 1998 (Issue #31).

- | | |
|-----------------------------|--------------------------|
| 2. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R12-4-317 | New Section |

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. § 17-231(A)(2)

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

All written comments are to be addressed to the following to ensure they will be placed into the rule record for consideration by the Arizona Game and Fish Commission. This is 2 of 2 alternative language proposals being proposed. *This alternative would ban organized hunting contests for predators, furbearers, and nongame mammals if there is any economic benefit or gain.* The closing date for written comments is February 17, 1999.

Name: Susan L. Alandar

Address: Arizona Game and Fish Department
2221 West Greenway Road DORR
Phoenix, Arizona 85023

Telephone: (602) 789-3289

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5. An explanation of the rule, including the agency's reasons for initiating the rule:

This is the 1 of 2 alternative language proposals being proposed. *This alternative would ban organized hunting contests for predators, furbearers, and nongame mammals if there is any economic benefit or gain.*

Background. In late 1997, some individuals began promoting a hunting contest which they called "Predator Hunt Extreme." They offered a \$10,000 first prize, and valuable other prizes, for anyone who entered their contest and killed the most predators -- specifically bobcats, mountain lion, coyotes, and foxes. In their promotional materials, they introduced themselves as "hard-core mule deer hunters" and stated "We became concerned with the damage to our wildlife after Arizona voted to ban trapping on public ground. We wanted to help our wildlife out the best we could. Our solution? Predator Hunt Extreme."

This promotion quickly became a media event, and there was a negative reaction from many members of the public. Even after the hunt was cancelled in response to public reaction, there was concern from many that there were no laws in place to keep such a contest from happening in the future.

The role of the Department and the Commission. The mission of the Arizona Game and Fish Department is "...to conserve, enhance and restore Arizona's diverse wildlife resources ...and to provide wildlife resources...for the enjoyment, appreciation, and use of present and future generations." The Department's work is supported not by tax dollars, but by revenue generated from the sale of hunting and fishing licenses. There are many people, however, who do not hunt or fish, but who do enjoy Arizona wildlife in other ways. These persons, too, are the Department's beneficiaries -- included in the "present and future generations" for which the Department manages wildlife. The Department must constantly balance the needs and desires of all of its customers and beneficiaries within the framework of its mission, which is founded in the wildlife laws of Arizona and the policies established by the Arizona Game and Fish Commission.

Arizona Administrative Register
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All of the Commission's policies, which affect the rights of the public, are established in *rule* or *order*. The State *rulemaking* process is governed by the Administrative Procedure Act, which is written to allow the greatest possible public participation during rulemaking, and to ensure that State agencies evaluate all of the issues raised by the public during the participation period. The Commission cannot change or create a rule without following the rulemaking process. Commission *orders* are adopted annually after a separate public participation process. They have a limited authority and may generally only establish hunting seasons and bag and possession limits. Orders cannot address peripheral activities such as hunting contests.

Public requests for rule change. Two "petitions for rule" were filed on the hunting contest issue. (A.R.S. § 41-1033 allows any person to file a petition for rule with a State agency following procedures established by the agency.) The 1st petition was filed by the Wildlife Conservation Advisory Council. The Council is comprised of organization members. Its organization members consist of 32 wildlife and sportsmen organizations statewide, whose combined memberships by Arizona residents number approximately 40,000. Their petition was considered and accepted by the Arizona Game and Fish Commission at its open meeting of April 18, 1998. Upon accepting the petition, however, the Commission gave direction to the Department to file a *Notice of Rulemaking Docket Opening* broad enough to allow flexibility in developing rule language. This was agreed to by the petitioner, who was also aware that a second petition had been filed on this issue.

The 2nd petition was filed jointly by the Animal Legal Defense Fund, Humane Society of the United States, Defenders of Wildlife, Animal Protection Institute, Predator Education Fund, Wildlife Damage Review, Arizona Humane Society, Arizona Society for the Prevention of Cruelty to Animals, Fund for Animals, and the Grand Canyon Trust. All but 2 of these organizations are national. Arizona memberships total 179,000 persons.

Representatives for both of the petitioners worked together to come up with rule language which would be acceptable to the petitioners and to the Department. Based upon this language, the Department drafted a *Notice of Proposed Rulemaking* and brought it to the Arizona Game and Fish Commission for consideration at its open meeting on June 20, 1998. The *Notice* was published in the *Arizona Administrative Register* on July 31, 1998. Written comments were accepted until September 3, 1998, and statewide public hearings were held as noticed on September 2 and 3, 1998. The Arizona Game and Fish Commission held a public hearing on October 24, 1998, in Phoenix.

At that meeting, the Department presented draft evaluations of arguments raised to date and offered new rule language that would require filing a Notice of Supplemental Rulemaking and additional public input. After hearing public testimony, the Commission instead directed the Department to pursue mediated rulemaking to be facilitated by the Attorney General's office. The mediation was to include the original 2 petitioners for this rule (Richard Katz, representing several animal welfare organizations, and Pete Cimellaro, representing various sportsmen's organizations) and others who may wish to participate. The Department was directed to present the results of this mediation at the Commission's December Commission meeting, and the oral proceedings were continued to that meeting.

The mediation process was followed with representatives from several interested parties. The resulting mediated language was submitted to the Arizona Game and Fish Commission in a draft Notice of Supplemental Proposed Rulemaking at its (continued) public hearing on December 11, 1998. After listening to public input at that public hearing, the Commission instead directed the Department to file alternative Notices of Supplemental Proposed Rulemaking. This is so that the Commission can take public input on and consider 2 alternative versions of the rule, both of which vary substantively from the rule as originally published in the Notice of Proposed Rulemaking.

6. An explanation of the substantial change which resulted in this supplemental notice:

The rule as originally proposed would prohibit a person from participating, promoting, or soliciting contests for "taking" predatory animals, fur-bearing animals, or nongame mammals unless they are either (1) not open or advertised to the general public, or (2) limited to 5 or fewer persons. The maximum economic benefit that could be awarded would be \$500. The maximum length allowed would be 3 days. The proposed rule also would require that a written report on the animals taken be submitted to the Department within 7 days of a contest's conclusion.

The new proposed language would prohibit a person or group from participating in, promoting, or soliciting participation in any organized hunting contest for killing predatory animals, fur-bearing animals, or nongame mammals for economic benefit or gain. This rule would ban organized hunting contests for these animals if there is any economic benefit or gain. Changing the word "taking" to "killing" clarifies the intent of the proposal. Using the broad definition of "take" at A.R.S. § 17-101 would prohibit contests which do not result in the killing of wildlife. That was not the intent of the proposal.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying the study, any analysis of the study and other supporting material:

The agency did contract a survey to support the proposed rule. The survey, *Arizona Residents' and Hunters' Attitudes Toward Predator Hunting Contests*, was conducted by Responsive Management of Harrisburg, Virginia. The public can review the information in the survey the Department's Phoenix office or at any of the Department's regional offices. In summary, the results were:

Persons surveyed were licensed Arizona hunters and other Arizona residents. Respondents were told that "A predator hunting contest is an event where teams of hunters compete for cash and/or prizes. The winning team scores the most points by killing the most coyotes, foxes, and bobcats. Predator hunting contests are not prohibited by law in Arizona, but these contests are not endorsed by the Arizona Game and Fish Department either. All predators must be taken in accordance with Arizona hunting regulations." Survey respondents were then asked if they agree or disagree that the Arizona Game and Fish Commission should make predator hunting contests in Arizona against the law.

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Of the hunting license holders, over 1/3 agreed that predator hunting contests should be against the law. Specifically, 23% strongly agreed, 14% somewhat agreed, 17% somewhat disagreed, 45% strongly disagreed, and 6% had no opinion or did not know.

Of the other Arizona residents, over 2/3 agreed that predator hunting contests should be against the law. Specifically, 55% strongly agreed, 14% somewhat agreed, 11% somewhat disagreed, 10% strongly disagreed, and 5% did not know.

A person may review this study by contacting:

Name: Susan L. Alandar
 Address: Arizona Game and Fish Department
 2221 West Greenway Road DOAS
 Phoenix, Arizona 85023
 Fax: (602) 789-3299

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

9. **The preliminary summary of the economic, small business, and consumer impact:**

Persons and organizations would no longer be able to offer or receive any economic benefit or gain for any organized contest for killing predators, furbearers or nongame mammals. Persons or groups holding hunting contests could offer only things such as certificate or plaque with no economic value. Prizes such as cash, firearms, or anything else with an economic value would be prohibited. Since "big prize" hunts such as "Predator Hunt Extreme" are extremely rare (the Department is not aware of any similar hunt having been held), the economic impact of this rule on Arizona's economy will not be great. There should be little impact on small business or consumers.

10. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: John Phelps, Predator/Furbearer Biologist
 Address: Arizona Game and Fish Department
 2221 West Greenway Road WMGB
 Phoenix, Arizona 85023
 Telephone: (602) 789-3352

11. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how person may request an oral proceeding on the proposed rule:**

See preceding question #4 of this Notice for information on submission of written comments.

Date: March 20, 1999
 Time: 1:30 p.m.
 Location: Inn Suites
 6201 North Oracle Road
 Tucson, Arizona

Nature: The Arizona Game and Fish Commission will hold a hearing and may take final action on this rule.

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

13. **Incorporations by reference and their location in the rules:**

None.

14. **The full text of the changes follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section

R12-4-317. Hunting Contests

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-317. Hunting Contests

- A. A person or group shall not participate in, promote, or solicit participation in any organized hunting contest for killing tak-

ing predatory animals, fur-bearing animals, or nongame mammals for economic benefit or gain.

- B. There shall be an exception to Subsection (A) for events meeting the following criteria:

1. The event is not open or advertised to the general public, or is limited to participation by 5 or fewer persons;
2. The maximum aggregate economic benefit to be awarded to all participants is \$500; and

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3. The maximum length for the event is 3 days, not including days cancelled because of inclement weather.
- C. A person or group organizing, promoting, or soliciting participation in a hunting contest which is lawful under this rule shall submit a written report to the Department within 7 days of the

conclusion of the contest. The report shall specify the name and mailing address of the person or group reporting, and the number of each species of animal taken from each game management unit during the event.